STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED May 1, 2008
v	No. 276152 Macomb Circuit Court
DARYL L. WALDON, Defendant-Appellant.	LC No. 2006-000383-FC

Before: Bandstra, P.J., and Fitzgerald and Markey, JJ.

PER CURIAM.

Defendant appeals as of right his jury convictions of second-degree murder, MCL 750.317, two counts of assault with intent to commit murder, MCL 750.83, and three counts of possession of a firearm with intent to commit a felony (felony-firearm), MCL 750.227b. We affirm.

Defendant's convictions stem from a shooting that occurred at a New Year's Eve celebration on January 1, 2006, at a dance hall. According to prosecution witnesses, defendant intended to shoot Erron Purry, and did so four times. However, while shooting at Purry, defendant also shot and killed Anthony McCommons, and wounded a woman in the leg.

Purry testified that he was on the dance floor at approximately 2:00 a.m. when defendant bumped into him. Purry recognized defendant from middle and high school and the neighborhood, and thought that the "bump" was "aggressive" rather than a "dancing bump". Purry retaliated by pushing defendant away from him. After he pushed defendant away, defendant drew a handgun and shot at him. As Perry tried to get away, he was shot several times, including once in the back. During cross-examination, Purry testified that he and defendant had not had any previous disagreements.[1] Other prosecution witnesses corroborated Purry's version of the shooting. Defendant presented the testimony of an eyewitness who stated that while defendant and Purry engaged in a minor altercation, they had ended it several minutes before the shooting occurred. The witness maintained that defendant did not shoot Purry or the others.

[1] He did admit, however, that he had given defendant's name to the police in relation to a previous shooting.

Defendant's sole argument on appeal is that the trial court erred by refusing to provide a lesser included offense instruction for voluntary manslaughter for the shooting of McCommons. When defense counsel raised this issue, the trial court stated that it would not give the instruction because defendant had failed to present evidence of provocation that would cause a reasonable person to lose control.

We generally review claims of instructional error de novo. *People v Fennell*, 260 Mich App 261, 264; 677 NW2d 66 (2004). However, a trial court's determination as to whether a jury instruction is applicable is reviewed for an abuse of discretion. *People v McKinney*, 258 Mich App 157, 163; 670 NW2d 254 (2003). If the trial court's decision results in an outcome within the range of principled outcomes, it has not abused its discretion. See *Maldonado v Ford Motor Co*, 476 Mich 372, 388; 719 NW2d 809 (2006); *People v Babcock*, 469 Mich 247, 269; 666 NW2d 231 (2003).

When a defendant is charged with murder, the trial court must instruct the jury on voluntary and involuntary manslaughter at the defendant's request, so long as those instructions are supported by a rational view of the evidence. *People v Mendoza*, 468 Mich 527, 533, 541; 664 NW2d 685 (2003); *People v Cornell*, 466 Mich 335, 357; 646 NW2d 127 (2002). Here, defendant specifically decided not to request an instruction on involuntary manslaughter, but requested an instruction on voluntary manslaughter. "[T]o show voluntary manslaughter, one must show that the defendant killed in the heat of passion, the passion was caused by adequate provocation, and there was not a lapse of time during which a reasonable person could control his passions." *Mendoza, supra* at 535. "The provocation necessary to mitigate a homicide from murder to manslaughter is that which causes a defendant to act out of passion rather than reason." *People v Sullivan*, 231 Mich App 510, 518; 586 NW2d 578 (1998). The provocation must be that which would cause a reasonable person to lose control. *Id*.

In this case, a rational view of the evidence does not support a voluntary manslaughter instruction. The eyewitness testimony, including that of defendant's witness, established that defendant was either the initial aggressor, or shot Erron, and McCommons, in response to Erron pushing defendant. No underlying rationale for the shooting was presented; and the defense maintained that defendant was not the person who shot at Erron. No reasonable jury could find that merely being shoved by someone on a dance floor was adequate provocation for murder. "Not every hot-tempered individual who flies into a rage at the slightest insult can claim manslaughter." *People v Pouncey*, 437 Mich 382, 389; 471 NW2d 346 (1991). Because no reasonable jury could find that the provocation was adequate, the trial court properly refused to instruct the jury on voluntary manslaughter.

We affirm.

/s/ Richard A. Bandstra
/s/ E. Thomas Fitzgerald
/s/ Jane E. Markey